BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

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03/14/22
04:59 PM
A2106001

Application of Pacific Gas and Electric Company for Adoption of Electric Revenue Requirements and Rates Associated with its 2022 Energy Resource Recovery Account (ERRA) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation. (U 39 E)	**Application 21-06-001** **(Filed June 01, 2021)**

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND AGRICULTURAL ENERGY CONSUMERS ASSOCIATION APPLICATION FOR REHEARING OF D.22-02-002

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March 14, 2022

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Pursuant to the California Public Utilities Commission (Commission) Rules of Practice and Procedure Rule 16.1 and 1.8(d) and California Public Utilities Code § 1731(b)(1),[1] the California Large Energy Consumers Association (CLECA)[2] and the Agricultural Energy Consumers Association (AECA)[3] submit this application for rehearing of Decision (D).22-02-002*, Decision*

[1] All section references are citations to the Public Utilities Code and all rule citations are to the Commission's Rules of Practice and Procedure unless stated otherwise.

[2] CLECA is an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, and minerals processing industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation. CLECA has been an active participant in Commission regulatory proceedings since the mid-1980s, and all CLECA members engage in Demand Response (DR) programs to both promote grid reliability and help mitigate the impact of the high cost of electricity in California on the competitiveness of manufacturing. CLECA members have participated in the Base Interruptible Program (BIP) and its predecessor interruptible and non-firm programs since the early 1980s.

[3] AECA represents the collective interests of the state's leading agricultural associations, including California Citrus Mutual, Western Growers Association, California Grape and Tree Fruit League, Milk

Adopting Pacific Gas and Electric Company's 2022 Electric Revenue Requirements Associated with Energy Resource Recovery Account Forecast, Generation Non-Bypassable Charges Forecast, Greenhouse Gas Revenue Forecast, and Related Proposals (Decision).[4] Pursuant to Rule 1.15, this application for rehearing is timely filed within 30 days of the date the Commission issued the Decision.[5]

I. INTRODUCTION

This application for rehearing identifies substantive and procedural errors related to the amortization period for a $358 million shortfall in the 2021 year-end balance for PG&E's Energy Resource Recovery Account (ERRA).[6] This issue arose in the closing weeks of the proceeding after an update to PG&E's forecasts increased the predicted rate hike from 1.6% to as much as 14.4%. In response to this nearly tenfold spike, the assigned Administrative Law Judge (ALJ) directed PG&E to compare the rate impacts of 12-month, 18-month, and 24-month amortization periods for the undercollected ERRA balance.[7] A longer amortization period would

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Producers Council, California Dairies, Inc., California Poultry Federation, Almond Hullers and Processors Association, California Grain and Feed Association, Agricultural Council, Western Agricultural Processors Association, and California Cotton Ginners and Growers Association. AECA also works on behalf of the combined interests of several county farm bureaus and more than forty agricultural water districts. AECA's membership is broad based, reflecting family farmers from Redding in the north to San Diego in the south, who grow crops ranging from alfalfa to walnuts. Through its members and membership associations, AECA represents in excess of 40,000 California agricultural producers. Many of our members are vertically integrated and as a result, AECA also represents the interests of numerous food and fiber processing operations located throughout California.

[4] Counsel to CLECA has been authorized to make this filing on behalf of AECA per Rule 1.8(d).

[5] The Decision was issued February 10, 2022, and the thirtieth day thereafter is a Saturday. Under Rule 1.15, the last day of the filing period is therefore the next business day, Monday, February 14, 2022.

[6] Decision at 30. The undercollection applied specifically to the ERRA main balancing account (ERRA-Main).

[7] *Id*. at 9 ("On December 20, 2021, the assigned ALJ issued a ruling ordering PG&E to provide analysis concerning the ERRA balance in the December Update given two scenarios: amortizing the 2021 ERRA balance over an 18-month period and over a 24-month period. The parties were also ordered to meet and confer on the amortization periods and submit a joint or individual statements."); *see also id*. at 12

alleviate some of the burden on ratepayers. Nonetheless, the Decision adopts a 12-month period.

The 12-month amortization period is not just and reasonable because PG&E—the only party permitted to introduce facts into the record regarding amortization—failed to provide competent evidence that could support the Commission's finding that it is just and reasonable. Moreover, the Decision deviated from Commission precedent by failing to consider ratepayer protections.

II. PROCEDURAL HISTORY

On June 1, 2021, PG&E filed its application and prepared testimony, which forecasted an increase in system average bundled rates of 2.4%.[8] On August 25, PG&E filed its Revised Testimony, which *reduced* the forecasted rate change to 1.6%.[9]

PG&E's application does not mention amortization of the ERRA-Main account.[10] Protests were timely filed, but none mention amortization.[11] At the prehearing conference (PHC), no

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("This year the November Update reflected a significant increase . . . PG&E was ordered to provide an October Update . . . and a December Update . . . to calculate the forecast year-end balance."); *id*. at 46 ("A.21-06-001, filed on June 1, 2021, forecast a 2.4% increase in system average bundled rates. The November Update . . . proposed a 13.8% increase . . . An October Update and a December Update were ordered to determine if the rate increase was a trend.") (Finding of Fact 6).

[8] PG&E Prepared Testimony at 20-4:11 (June 1, 2021). PG&E's Revised Testimony, Ex. PGE-1, was admitted to the record in lieu of the original prepared testimony on October 8, 2021. *See* Administrative Law Judge's Ruling Admitting Exhibits Into Evidence and Granting Requests for Confidential Treatment, A.21-06-001 at 3-4 (Jan. 26, 2022) (January 26 Ruling).

[9] *See* Ex. PGE-1 at 20-4:14 *supra* note 8.

[10] *See* Application of Pacific Gas and Electric Company (U 39 E) for 2022 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation Amortization, A.21-06-001 (June 1, 2021) (Application).

[11] *See* Decision at 5-6 (summarizing procedural history). Protests were timely filed by Public Advocates Office (Cal Advocates) and, jointly, by East Bay Community Energy, Marin Clean Energy, Sonoma Clean Power Authority, Central Coast Community Energy, San Jose Clean Energy, Pioneer Community Energy, City and County of San Francisco, Peninsula Clean Energy Authority, and Silicon Valley Clean Energy Authority (Joint CCAs). A response was filed by the Direct Access Customer Coalition (DACC).

party identified amortization as a disputed issue.[12] The Scoping Memo does not mention amortization.[13] PG&E's Supplemental Testimony and Rebuttal Testimony, filed in September and October, do not discuss amortization.[14]

At the October 8 status conference, all parties agreed there were no issues in dispute except for a narrow question regarding the Joint CCAs data requests to PG&E.[15] Four of the five then-joined parties—Direct Access Customer Coalition, Public Advocates Office, AECA, and PG&E—waived evidentiary hearings.[16] The only intervenor testimony, which also did not identify amortization of the year-end ERRA balance as an issue, was admitted to the record.[17] Later that same day, an ALJ email ruling directed PG&E to notify the service list whether there was a need for an evidentiary hearing.[18] On October 11, PG&E notified the service list that evidentiary hearings would not be needed.[19]

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[12] *See* PHC Tr. index (showing no entries for amortization). Parties present at the PHC were California Community Choice Association (CalCCA), PHC Tr. 9:13, 10:6-8; DACC, PHC Tr. 10:13-14; Joint CCAs, PHC Tr. 11:8-21; PG&E, PHC Tr. 11:26, 16:4-6 ; Cal Advocates, PHC Tr. 16:8-13. CalCCA, PHC Tr. 9:11-28; DACC, PHC Tr. 10:12-22.

[13] *See* Assigned Commissioner's Scoping Memo and Ruling, A.21-06-001 (Aug. 11, 2021) (Scoping Memo).

[14] PG&E Supp. Testimony (Sept. 2, 2021) (Ex. PGE-2); PG&E Rebuttal Testimony (Oct. 6, 2021) (Ex. PGE-3). *See* January 26 Ruling at 3.

[15] Email Ruling with Further Instructions for Evidentiary Hearing, A.21-06-001 at 3 (Oct. 8, 2021) (October 8 Ruling); *see* Status Conf. Tr. 10:28-11:5.

[16] Decision at 8.

[17] January 26 Ruling at 4 (stating Joint CCAs testimony, Ex. JCCA-01, and the confidential version Ex. JCCA-01C, admitted on Oct. 8, 2022). The Joint CCAs testimony mentions amortization only in the context of "Decision 20-12-038, [in which] the Commission approved a PCIA Adder to amortize the 2020 PUBA year-end balances over a three-year period beginning in 2021. The PUBA only remains an issue in this year's proceeding to confirm this three-year amortization is being performed correctly," Ex. JCCA-01 at 9:11, and mentions it in the context of Joint CCAs' request for "confidential [workpapers] supporting the final PCIA rates approved in A.20-07-002 and in effect during 2021." *Id*. at Attachment B.

[18] October 8 Ruling at 3.

[19] Decision at 8.

On November 8, PG&E submitted its Update to Prepared Testimony, better known as the fateful "November Update."[20] Since June, PG&E had filed four rounds of testimony that forecasted an average rate increase of approximately 2%. Now, a month after evidentiary hearings were waived, the November Update forecasted a nearly *tenfold greater* increase in rates from 1.6% to 14.4%.[21] Briefs and intervenor testimony were already filed.[22] On November 17, PG&E submitted its Third Supplemental Testimony to revise the rate increase to 13.8%.[23]

On November 24, the ALJ directed PG&E to file supplemental testimony on "rate and bill impacts" within three weeks, after which other parties had six days to file "reply comments."[24] The ALJ directed that PG&E's testimony—but not the reply comments—be entered into the record.[25] On December 14, PG&E submitted its Fourth Supplemental Testimony, which contained an "October Update" (based on data through September 30) and a "December

[20] PG&E Update to Prepared Testimony (Nov. 8, 2021) (Ex. PGE-5); *see* September 26 Ruling at 3.
[21] *Compare* Ex. PGE-1 at 20-4:14 (reporting increase of "approximately 1.6 percent") *with* Ex. PGE-5 at 27:8 (reporting increase of "approximately 14.4 percent").
[22] Scoping Memo at 6 (scheduling opening briefs for October 22, 2021, and reply briefs for November 1, 2021); *see* PG&E OB (Oct. 22, 2021); Joint CCAs OB (Oct. 22, 2021); PG&E RB (Nov. 1, 2021); Joint CCAs RB (Nov. 1, 2021); DACC RB (Nov. 1, 2021); *see also* January 26 Ruling at 3-4 (showing only intervenor testimony admitted on October 8).
[23] PG&E Third Supplemental Testimony at 4 (Nov. 17, 2021) (Ex. PGE-6); *see also* January 26 Ruling at 3.
[24] E-Mail Ruling Ordering Additional Updates with Amended Schedule at 3, A.21-06-001 (Nov. 24, 2021) (November 24 Ruling).
[25] CLECA and AECA's "reply comments" authorized by the November 24 Ruling did not address the 18-month and 24-month amortization scenarios because the comments were due before PG&E filed its Fifth Supplemental Testimony on December 28, 2021. *See infra* notes 30-32. On December 29, 2021, the ALJ granted PG&E's December 27, 2021, motion for leave to respond to CLECA and AECA's comments on PG&E's Fourth Supplemental Testimony. *See* E-Mail Ruling Granting Pacific Gas and Electric Company's Request to File Reply Comments, A.21-06-001 (Dec. 29, 2021). The ruling directed that PG&E's response be marked as an exhibit. On December 30, 2021, PG&E filed its response to CLECA and AECA's comments. *See* Reply Comments to December 20, 2021 Comments to Fourth Supplemental Testimony, PGE-7 (Dec. 30, 2021).

Update" (based on data through November 30).[26] These updates forecasted average rate increases of, respectively, 9.2% and 12.6%.[27]

On December 17, three days *before* parties filed comments on PG&E's Fourth Supplemental Testimony, the ALJ ordered PG&E to produce yet another round of testimony. This testimony was to evaluate the impacts of two ratemaking alternatives proposed by the ALJ: an "18 Month Amortization Scenario," which would model the "rate impacts and bill impacts for amortizing the forecast end-of-year ERRA-Main balance . . . over an 18-month period," and a similar "24 Month Amortization Scenario."[28] The ALJ required that the parties then meet and confer regarding the 18-month and 24-month scenarios.[29] Afterward, the parties were to "file a joint statement summarizing any proposals for amortization" unless they could not reach "sufficient consensus."[30]

On December 28, PG&E filed its Fifth Supplemental Testimony regarding the amortization options.[31] It reported that under an 18-month or 24-month amortization, the rate increase would drop to 10.9% or 10.1%.[32] PG&E's testimony included an extended argument

[26] PG&E Fourth Supplemental Testimony (Dec. 14, 2021) (Ex. PGE-7); *see* January 26 Ruling at 3.
[27] Ex. PGE-7 at 2:3, 9:24.
[28] E-Mail Ruling Ordering Additional ERRA-Main Data at 2-3 (Dec. 17, 2021).
[29] *Id*. at 3 "Using this additional data, parties are directed to meet and confer to consider this additional data and the possibility of amortization of the forecast end-of-year ERRA-Main balance. Parties are directed to file a joint statement summarizing any proposals for amortization and party support for the proposals no later than January 6, 2022. If parties are unable to reach sufficient consensus for a joint statement, parties may file separate statements."
[30] *Id*.
[31] PG&E Fifth Supplemental Testimony (Dec. 28, 2021) (Ex. PGE-9); *see* January 26 Ruling at 3.
[32] Ex. PGE-9 at 2:4, 2:13, 9:1, 9:11.

regarding "the importance of maintaining a 12-month amortization schedule . . . and on the potential cost to customers of a longer amortization period."[33]

On January 6, CLECA and AECA filed a joint meet-and-confer statement, while PG&E, DACC, Joint CCAs, and Public Advocates filed a separate statement.[34] PG&E also moved to admit into the record its Fifth Supplemental Testimony.[35] Afterward, the ALJ emailed the parties for them to stipulate to a shortened comment period on the Proposed Decision.[36]

On January 24, the Proposed Decision was issued. Two days later, the ALJ admitted into the record all outstanding exhibits, including PG&E's seven rounds of testimony.[37] Comments on the Proposed Decision were filed on January 31 and February 3 by PG&E, Joint CCAs, and CLECA and AECA. On February 8, a revised Proposed Decision (Revised PD) was released, which the Commission adopted on February 10.

III. STANDARD OF REVIEW

An application for rehearing "shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and

[33] *Id*. at 1:17-21; *see also* id. at 10:23-13:18.
[34] Pacific Gas and Electric Company (U-39 E), The Direct Access Customer Coalition, Joint CCAs and The California Community Choice Association, and The Public Advocates Office Party Statements Concerning Additional ERRA-Main Data, A.21-06-001 (Jan. 6, 2022); Joint Statement of California Large Energy Consumers Association, Agricultural Energy Consumers Association, and California Farm Bureau Federation Regarding Amortization of the ERRA-Main Balance, A.21-06-001 (Jan. 6, 2022).
[35] Motion of Pacific Gas and Electric Company to Offer Exhibits into Evidence and Admit into the Record Under Rule 13.8(c), A.21-06-001 (Jan. 6, 2022).
[36] Decision at 9 ("On January 7, 2022, the ALJ emailed a procedural communication to the parties to stipulate to a seven-day comment period and a three-day reply period after the proposed decision is mailed.").
[37] *See* January 26 Ruling.

must make specific references to the record or law."[38] "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[39] If an application requests oral argument on rehearing, "it should explain how oral argument will materially assist the Commission" if, for example, the challenged decision "departs from existing Commission precedent without adequate explanation," "adopts new" or "refines existing" precedent, or "presents legal issues of exceptional controversy, complexity, or public importance."[40]

Section 1757 provides the customary standard of review because D.22-02-002 involves a "ratemaking . . . decision of specific application that is addressed to [a] particular part[y]."[41] Section 1757(a) establishes that the Commission commits legal error where: (1) the Commission acted without, or in excess of, its powers or jurisdiction; (2) the Commission has not proceeded in the manner required by law; (3) the decision is not supported by the findings; (4) the findings in the decision are not supported by substantial evidence in light of the whole record; (5) the order or decision was procured by fraud or was an abuse of discretion; or (6) the order or decision violates a constitutional right.[42]

[38] Rule 16.1(c).
[39] *Id*.
[40] Rule 16.3(a)(1)-(3).
[41] § 1757(a). Formally, § 1757 establishes the scope of *judicial* review.
[42] Section 1757 establishes the standard of review for ratemaking proceedings (as well as complaint, enforcement, and licensing matters). Quasi-legislative proceedings are reviewed pursuant to § 1757.1. The only difference between § 1757 and § 1757.1 is that the latter does not ask whether "the findings in the decision of the commission are . . . supported by substantial evidence in light of the whole record." Instead, § 1757.1 focuses on whether the decision is adequately supported by the findings.

IV. LEGAL ERRORS THAT WARRANT REHEARING

A. The Lack of an Extended Amortization Period or Other Ratepayer Protections Is Unjust and Unreasonable.

1. The ERRA rate increases and lack of extended amortization will worsen the hardships faced by many ratepayers.

The Decision approves an average rate increase of 12.6% on the heels of an additional 7% increase, which are based, respectively, on PG&E's ERRA balances[43] and Annual Electric True-Up (AET).[44] This cumulative increase of 20% is a costly testament to the growing divide between the Commission's duties to ratepayers and the dwindling protections that it affords them.[45] On one hand, the Commission has acknowledged the plight of PG&E ratepayers, such as the members of CLECA and AECA, whose electric rates have skyrocketed by 40% since 2013,[46] and which are expected to climb another 40% by 2030.[47] The Commission has responded to these increases by championing affordability, conducting multiday en banc hearings, publishing staff reports, opening rulemakings and investigations, coordinating with other agencies, and enlisting the contributions of a wide range of stakeholders. These overtures are not always programmatic. Recently, Commissioner Houck bluntly acknowledged that

[43] Decision at 49 (Finding of Fact 17).
[44] PG&E Advice Letter 6408-E (Nov. 15, 2021) and supplements thereto.
[45] *See* California Large Energy Consumers Association, Energy Producers and Users Coalition, Agricultural Energy Consumers Association, California Farm Bureau Federation, California Manufacturers & Technology Association, Center for Accessible Technology, The Utility Reform Network, and Small Business Utility Advocates Protest of AL 6408-E (Dec. 6, 2021) (Joint Ratepayers AET Protest).
[46] Energy Div., *Utility Costs and Affordability of the Grid of the Future: An Evaluation of Electric Costs, Rates and Equity Issues Pursuant To P.U. Code Section 913.1* at 7 (May 2021) available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/en-banc/senate-bill-695-report-2021_en-banc-white-paper.pdf
[47] *Id*. at 51; Utility Dive, *California's Dilemma: How to Control Skyrocketing Electric Rates While Building the Grid of the Future*, available at https://www.utilitydive.com/news/californias-dilemma-how-to-control-skyrocketing-electric-rates-while-buil/597767/ (citing Commission staff, stating "By 2030, Pacific Gas and Electric (PG&E) residential rates will be 40% higher than if they had followed inflation, Staff projected.").

"ratepayers in PG&E's territory have had a *particularly difficult year*" and are "justifiably concerned and upset about the number and size of the rate increases."[48]

Despite these manifestations of the Commission's concern, it continues to approve unsustainable rate increases. ERRA Standby rates, for example, were forecasted to increase by 18.4%,[49] while the AET was projected to increase Standby rates an additional 50%.[50] Although the 2022 rate increases ultimately implemented by PG&E are not as severe, they remain troublingly high.[51] Commission staff anticipate that rates will trend upward for the foreseeable future, as new species of revenue requirement are hatched from policies such as building decarbonization, transport electrification, and wildfire mitigation.[52]

2. It is unjust and unreasonable to protect PG&E's balance sheet by forcing ratepayers to fund ERRA with a business-as-usual, 12-month amortization period despite the unaffordable rate shock.

Pub. Util. Code § 451 provides, in part, that "all charges demanded or received by any public utility . . . shall be just and reasonable." Just and reasonable rates, however, have "never" been determined solely on "the cost of services" or "price signals."[53] Section 451 instead requires that the Commission consider all relevant factors when a utility applies for a rate increase,[54] including "current economic conditions,"[55] "affordability,"[56] "the economic

[48] Cmts. of Comm'r Houck at Feb. 10, 2022, voting meeting (emphasis added).
[49] Ex. PGE-9 at AppB-21.
[50] *See* Joint Ratepayers AET Protest.
[51] *See, e.g.*, PG&E Advice Letter 6509-E (Feb. 18, 2022); PG&E Advice Letter 6408-E-B (Dec. 30, 2021). Note ratepayers are burdened not only by the resulting financial costs but also by the complexity PG&E's nearly 70 different revenue requirements. See PG&E Advice Letter 6408-E at 5-6.
[52] Indeed, a proposed decision to authorize PG&E to recover $683 million for catastrophic events is on the agenda for the next Commission meeting. Public Agenda 3504 for March 17, 2022 https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M458/K238/458238803.pdf
[53] D.04-07-022 at 148 (July 8, 2004) *quoting* D.96-01-011, 64 CPUC 2d 241, 287 (Jan. 10, 1996) *and* D.91-12-075, 42 CPUC 2d 566, 591-592 (Dec. 20, 1991).
[54] D.10-07-042 at 37 (July 29, 2010) (explaining § 451 analysis depends on "relevant conditions.").

tolerance of the ratepayer,"[57] and whether "rates have risen faster than inflation" [58] or simply if "rates are high."[59] Consequently, if "ratepayers have reduced resources to support rate increases," just and reasonable rates may be feasible only with "some belt tightening" by utilities.[60] The Commission has stated, for instance, that "historical results must be tempered" for ratesetting purposes if the historical data originated during a period of high inflation.[61]

More importantly, "[i]t is the Commission's goal to avoid rate shock and ensure rate stability whenever possible."[62] Rate changes similar in magnitude to PG&E's ERRA increases have prompted the Commission to limit the potential harm to ratepayers. In a particularly apt example, SCE sought an average rate increase of 11.6% primarily for its Energy Cost Adjustment Clause (ECAC).[63] The ECAC is a mechanism for the recovery of fuel costs, and served as a template for ERRA.[64] SCE's request was prompted by a "substantial increase in fuel and purchased power costs" that was expected to continue into the future.[65] To avoid rate shock (and to allow "sufficient time for all parties to prepare testimony"), the Commission adopted

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[55] D.13-05-010 at 7, 174 (May 9, 2013); D.96-01-011 at *143.
[56] D.96-01-011 at *41 ("There is nothing in the Code which equates cost-based rates as being a synonym for just and reasonable rates, or as the sole standard by which rates are considered just and reasonable.").
[57] D.12-11-051 at 22 (Nov. 29, 2012).
[58] D.10-07-042 at 40.
[59] D.96-01-011 at *144.
[60] D.10-07-042 at 40 ("PG&E's electric rates have risen faster than inflation in recent years. It is unreasonable to exacerbate this trend by imposing unneeded costs on ratepayers, especially at a time when California residents are struggling with high unemployment and stagnant incomes.").
[61] *See* D.83-12-025, 13 CPUC 2d 412 (Dec. 7, 1983); D.85559, 79 CPUC 513 at *2 (Mar. 16, 1976) ("Setting all rates on the basis of 'incremental' costs would, in a period of rapid inflation, produce grossly excessive revenues for utilities.").
[62] D.88-05-074,28 CPUC 2d 203 (May 25, 1988).
[63] *Id*.
[64] D.03-12-063 at 2 (Dec. 18, 2003).
[65] D.88-05-074.

interim rates that reduced the average increase from 11.6% to 3.7%.[66] Similarly, in D.21-02-014, the Commission recently approved an SDG&E proposal to amortize a $124 million ERRA undercollection over 22 months.[67] The Commission recognized that SDG&E's customers, like PG&E's customers in this proceeding, were expecting additional increases that would result in a large cumulative rate. The Commission therefore extended the amortization period from 10 months to 22 months—one additional year—to provide ratepayers with a reduction of 2.23%.[68] There are many other examples of the Commission extending an amortization period to limit the impact on ratepayers.[69] Indeed, even PG&E acknowledges a recent decision extending a 12-month amortization to 36 months to protect ratepayers.[70]

This Decision here, however, departs from the existing and long-standing Commission precedent without adequate explanation.[71] It rejects concerns about its deviation from precedent as "unfounded."[72] The Decision then finds that the "2.5% difference in system average bundled rates over a 12-month amortization versus a 24-month amortization does not overcome the need for the Commission's duty to ensure timely recovery of prospective procurement costs incurred by a utility."[73] The Decision, in other words, prioritized utility revenues and *rejected* a 1-year rate reduction of 2.5%. This result is the opposite of the Commission's decision in D.21-02-014, which extended amortization by 12 months to *provide* a

[66] *Id*.
[67] D.21-02-014 at 13 (Feb. 11, 2021).
[68] *Id*. at 7.
[69] *See, e.g.*, D.20-12-035 (Dec. 17, 2020) (36 months); D.20-12-028 (Dec. 17, 2020) (36 months); D.20-10-026 (Oct. 23, 2020) (17 months); D.14-02-022 (Feb. 27, 2014) (21 months); *see also* D.20-12-035 at 31 (Dec. 17, 2020) (finding that "a three-year amortization period for the 2020 year-end PUBA balance reasonably reduces rate shock," resulting in a $22 million revenue requirement per year for three years).
[70] Ex. PGE-9 at 11 n.12.
[71] See Rule 16.3(a)(1)-(3).
[72] Decision at 44.
[73] *Id*. at 16.

1-year rate reduction of 2.23%.[74] At a minimum, the Commission should grant this application for rehearing to resolve this split.

The Decision's inconsistent approach to amortization is not adequately explained because its rationale is generally contrary to Commission precedent. The Decision asserts that "[o]ne goal in setting rates is to *send timely price signals* by accurately reflecting the actual cost of providing service in any given time period in the rates charged in that period or as soon as practicable, pursuant to Pub. Util. Code § 454(d)(3)."[75] But for decades now, the Commission has expressly refused to determine whether rates are just and reasonable based "price signals."[76] While the Decision alleges that price signals are only "one goal" of ratesetting, it mentions no other goals. Either the Commission did not consider other goals or it did not disclose them.[77] The Decision's reliance on § 454.5(d)(3) is also misplaced because § 454.5(d)(1) conditions the "timely recovery" of utility revenues on the existence of "just and reasonable rates." Section 454.5(d)(3) therefore does not overcome the Commission's other duties, as the court has recognized.[78] The Decision also refers to "year-over-year misallocations," which, like "price signals," appears to be completely absent from the record and cannot constitute substantial evidence for the Commission's decision.[79]

Finally, the Commission "find[s] that amortizing the current PG&E undercollection over an expanded period of time may artificially reduce rates in the near-term and cause a larger

[74] D.21-02-014 at 7.
[75] Decision at 16 (emphasis added).
[76] *See supra* note 53.
[77] A failure to disclose its reasoning would violate § 1705, as discussed below.
[78] *See, e.g.*, *Douglas Ames v. Pub. Utils. Comm'n*, 197 Cal. App. 4th 1411 (2011).
[79] *Cf. The Utility Reform Network v. Pub. Utils. Comm'n*, 223 Cal. App. 4th 945 (2014) (reversing Commission grant of PG&E's requested relief for lack of competent evidence in the record) (*TURN*).

increase in the future to compensate for delayed cost recovery."[80] But these risks are always inherent in amortization, and the mere *possibility* of an adverse result cannot sustain a Commission finding.[81] The Commission has approved amortization many times in the past despite these risks.[82]

Ultimately, the Decision gives short shrift to ratepayers. It glosses over the very real consequences of rate increases, instead retreating into abstractions about its duties to utilities under § 454.5. If the Legislature intended for the Commission to prioritize cost recovery, however, it would have said so. Nothing in § 454.5 relieves the Commission of its obligation to balance all policies, including the recovery of ERRA balances, against the ratepayer interest in just and reasonable rates. The Decision's scant consideration of the impacts on ratepayers—especially given PG&E's failure to show that the effects would be just and reasonable by a preponderance of evidence—is not consistent with the Commission's duties and discretion.[83]

B. The 12-Month Amortization Period Is Not Supported by Substantial Evidence

A Commission decision must be supported by substantial evidence.[84] Hearsay materials, unless corroborated by competent evidence, "*do not constitute substantial evidence*."[85] Hearsay evidence is a statement offered to prove the truth of the matter asserted and which is

[80] Decision at 16.
[81] *Ponderosa Tel. Co. v. Pub. Utils. Comm'n*, 36 Cal. App. 5th 999, 1018 (2019) (*Ponderosa*) (rejecting evidence "of a generalized or theoretical nature"); *see also Van Pelt v. Carte*, 209 Cal. App. 2d 764 (1962) (rejecting conjecture).
[82] *See, e.g.*, D.89-12-057 (Dec. 20, 1989) (weighing trade-offs for amortization).
[83] *See* § 1757(a)(2), (5).
[84] § 1757(a)(4).
[85] *TURN*, 223 Cal. App. 4th at 952 (emphasis added).

made outside of a hearing.[86] "Documentary evidence" in Commission proceedings is considered "hearsay per se because the document is not a statement by a person testifying at the hearing."[87] Even testimony provided during a cross-examination in a different Commission proceeding constitutes hearsay.[88] Moreover, substantial evidence is not synonymous with "any" evidence.[89] It must address the precise issue in controversy,[90] and it cannot be of a "generalized or theoretical nature."[91] Mere possibility,[92] speculation,[93] or conjecture[94] is not substantial evidence.[95] Finally, the utility's evidence must be sufficient *on its own* to support a rate increase.[96]

The 12-month amortization period adopted by D.22-02-002 is not supported by substantial evidence, because PG&E's proof consisted exclusively of unsupported assertions and hearsay.[97] PG&E primarily relies on *quotations* from reports produced by the three major

[86] Hearsay evidence is evidence of a statement made out of court and offered to prove the truth of the matter stated. Unless it comes within one of the established exceptions to the hearsay rule, evidence of this type is inadmissible. *See, e.g.*, 6 Witkin Cal. Evid. Hearsay § 1 (4).
[87] D.86-12-101, 23 CPUC 2d 352, 354 (Dec. 22, 1986).
[88] *TURN*, 223 Cal. App. 4th at 966 ("PG&E also cites a DRA cross-examination exhibit that consists of Rothleder's testimony in a separate Commission proceeding. This testimony does not appear to be sworn and is hearsay in any event.").
[89] *See, e.g.*, *Kuhn v. Dept' of Gen. Srvcs.*, 22 Cal. App. 4th 1627, 1633 (1994).
[90] D.16-05-007 at 41 (May 12, 2016) (holding "the failure to produce responsive testimony equates to a determination that Joint Applicants have not met the requirements"); *see also* Cal. Evid. Code § 766 ("A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party.").
[91] *Ponderosa*, 36 Cal. App. 5th at 1018 (rejecting evidence "of a generalized or theoretical nature").
[92] *See, e.g.*, *People v. Williams*, 151 Cal. App. 2d 173 (1957).
[93] *Minnegren v. Nozar*, 4 Cal. App. 5th 500 (2016); *Griffin v. Haunted Hotel, Inc.*, 242 Cal. App. 4th 490 (2015).
[94] *Van Pelt v. Carte*, 209 Cal. App. 2d 764 (1962).
[95] *Oldenburg v. Sears, Roebuck & Co.*, 152 Cal. App. 2d 733 (1957).
[96] *See, e.g.*, D.83-12-025, 13 CPUC 2d 412 (Dec. 7, 1983).
[97] *See, e.g.*, D.18-01-009 at 9-10 (Jan. 11, 2018); D.15-07-044 at 29 (July 23, 2015).

credit rating agencies: Standard & Poor's (S&P), Moody's, and Fitch.[98] Under Commission precedent, however, all of the proffered S&P, Moody's, and Fitch materials are hearsay *as a matter of law*, because each "document is not a statement by a person testifying at the hearing."[99] The credit rating agency materials therefore do not and cannot constitute substantial evidence.[100] Almost the entirety of PG&E's argument for a 12-month amortization—its assertion, for example, that "a longer amortization period will increase costs to customers"—relies on the credit rating agency materials. Neither these materials nor the arguments they support can form the basis for any part of the Decision.

Far stronger evidence has been found to not constitute substantial evidence. In a single case, the Court of Appeal determined that the following evidence was *collectively* insufficient to support the Commission's approval of a PG&E generating facility:

- sworn testimony submitted to the Federal Energy Regulatory Commission by the California Independent System Operator (CAISO) to describe a need for new flexible generation capacity;
- a CAISO declaration of the estimated generation shortfall of 3,570 MW;
- California Energy Commission and Bay Area Air Quality Management District decisions to grant project permits;
- a PG&E witness who testified that the challenged project could alleviate a generation shortfall, if such a need existed; a data response from PG&E concerning the project's effect on the retirement of other power plants; and

[98] Ex. PG&E-9 at 11-13.
[99] D.86-12-101, 23 CPUC 2d 352, 354 (1986) (emphasis added).
[100] *See* CLECA and AECA Op. Cmts. on Proposed Decision (Jan. 31, 2022).

- a statement by CAISO's chief executive officer.[101]

None was substantial evidence. They were speculative expressions of "*fears* that . . . *may occur*"[102] or generalized possibilities, such as the "*potential* for a significant . . . *risk*."[103] Likewise, PG&E's reliance here on hearsay and vague hand-waving about the potential risks of a longer amortization are wholly insufficient to support a Commission finding.

The remainder of PG&E's argument omits any form of proof.[104] PG&E simply asserts that a longer amortization period will increase costs to customers by requiring them to "pay interest on the balancing account undercollections."[105] It adds that customer costs *might* increase if a longer amortization period forced PG&E to incur bank fees for "incremental lending capacity" or caused a ratings downgrade.[106] Even if these statements were made by an expert witness—and they are not—they still would not constitute substantial evidence.[107] Expert witness testimony "does not constitute substantial evidence when it is based upon conclusions or assumptions not supported by evidence in the record."[108] Moreover, PG&E provided no workpapers or other evidence to support this last set of claims, which would have enabled the Commission and other parties to test PG&E's claims.[109] PG&E's failure to provide

[101] *TURN*, 223 Cal. App. 4th at 955, 963.
[102] *Id*. at 965 (emphasis added).
[103] *Id*. at 955, 963 (emphasis added).
[104] Strictly speaking, the argument for a 12-month amortization is supported by the witness declaration for Margaret Becker. Ex. PGE-9 at 1:18-22, App'x D-6.
[105] Ex. PGE-9 at 12:31.
[106] *Id*. at 12:29-13:9
[107] *See, e.g.*, *Atkins v. City of Los Angeles*, 8 Cal. App. 5th 696, 739-740 (2017) (explaining that expert witness testimony is at most, "'competent' for purposes of considering on appeal *whether* sufficient evidence exists to support a finding.").
[108] *Hongsathavij v. Queen of Angels Med. Ctr.*, 62 Cal. App. 4th 1123, 1137 (1988).
[109] *See* D.91-05-028, 40 CPUC 2d 159 (May 8, 1991).

workpapers or other evidence within its ability should be viewed with distrust.[110] Finally, PG&E's warnings of *possible* risks,[111] speculation,[112] and conjecture[113] are not substantial evidence.

By relying on hearsay, PG&E failed to produce competent evidence to support its request for a 12-month amortization, which CLECA and AECA explained in detail in their comments on the Proposed Decision. When a utility fails to carry its evidentiary burden, "the application will be denied."[114] Here, the absence of competent evidence means that the 12-month amortization is necessarily "not supported by substantial evidence in light of the whole record."[115] By nonetheless granting PG&E this relief, the Commission did not proceed in the manner required by law,[116] acted in excess of its jurisdiction,[117] and it abused its discretion.[118]

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[110] Evid. Code § 412. See, for example, *Vallbona v. Springer*, 43 Cal. App. 4th 1525 (1996) holding that the jury could properly view with distrust the weak evidence presented by the defendant, as it was within the defendant's power to produce stronger and more satisfactory evidence.
[111] *People v. Williams*, 151 Cal. App. 2d 173, 311 P.2d 117 (1957).
[112] *Minnegren v. Nozar*, 4 Cal. App. 5th 500 (2016); *Griffin v. Haunted Hotel, Inc.*, 242 Cal. App. 4th 490 (2015).
[113] *Van Pelt v. Carte*, 209 Cal. App. 2d 764 (1962).
[114] D.83-12-025, 13 CPUC 2d 412 (Dec. 7, 1983) *quoting* D.90642, 2 CPUC 2nd 89, 98 (Jul. 31, 1979) ("Under California law, it is presumed that the existing rates are reasonable and lawful [citation to § 451]; therefore, in order to raise rates, it is incumbent on the utility to justify the increase. [citation] This is so because the Commission cannot raise rates unless it is determined that such increase is just and reasonable [citation to § 454]. Accordingly, the utility seeking an increase in rates has the burden of showing by clear and convincing evidence that it is entitled to such increase. If the utility does not sustain the burden of satisfying the Commission that the proposed increase is justified, the application will be denied.").
[115] § 1757(a)(4).
[116] *See Pedro v. City of Los Angeles*, 229 Cal. App. 4th 87, 99 (2014) (holding that "failing to comply with required procedures, applying an incorrect legal standard, or committing some other error of law" constitutes a failure to proceed in the manner required by law).
[117] *So. Cal. Gas Company v. Pub. Utils. Comm'n*, 24 Cal. 3d 653 (1979) (finding Commission acted in excess of jurisdiction when its disregarded a legislative directive to "permit" a program instead of "require" it).
[118] § 1757(a)(2), (5). *See, e.g.*, *The Utility Reform Network v. Pub. Utils. Comm'n*, 166 Cal. App. 4th 522, 537 (2008) (holding that Commission's exercise of discretion must be "based on the evidence in the record.").

C. The 12-Month Amortization Period Is Not Supported by Findings

Section 1705 provides that every Commission decision "shall contain, separately stated, findings of fact and conclusions of law . . . on all issues material to the order or decision." The length of the amortization period was a material issue. It was raised, *sua sponte*, by the December 17, 2021 ALJ ruling, which asked PG&E to file supplemental testimony that evaluated 18-month and 24-month amortization periods.[119] The materiality of the issue was cemented when PG&E's supplemental testimony requested that the Commission choose a 12-month period instead of the alternatives proposed by the ALJ.[120]

Despite the materiality of the amortization issue, the Decision's findings of fact and conclusions of law do not address it directly, if at all, and provide no basis by which a court could "ascertain the principles and facts relied upon by the [PUC] in reaching its decision."[121] By disregarding § 1705, the Commission acted in excess of its power, failed to proceed in the manner required by law, and abused its discretion.

D. Ratepayers Were Prejudiced by the Commission's Failure to Observe Its Own Rules and Statutory Procedures

The length of the amortization period was not raised as an issue in the Scoping Memo. It was put into controversy by a December 17, 2021, ALJ ruling, which expressly ordered the parties to consider alternative periods of 18 months and 24 months. This issue arose when PG&E filed testimony long after evidentiary hearings had been waived and briefs had been filed. PG&E's testimony showed rate increases an order of magnitude larger than its initial

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[119] *See supra* note 7.
[120] Ex. PGE-9 at 10:24-26 ("PG&E urges the Commission to authorize PG&E to recover the ERRA-Main undercollected balance over a 12-month amortization period").
[121] *Clean Energy Fuels Corp. v. Pub. Utils. Comm'n*, 227 Cal. App. 4th 641, 659 (2014); *see also Cal. Motor Transp. Co. v. Pub. Utils. Comm'n*, 59 Cal.2d 270 (1963).

forecasts. These initial forecasts still formed the facts of the case when parties waived hearings or, as in the case of CLECA, when they decided that the small rate increases did not warrant participation in the proceeding. Moreover, the only party given an opportunity to submit testimony or comment on the 18-month and 24-month amortization options was PG&E. These anomalies—particularly the determination of a material issue excluded from the Scoping Memo and the lack of a meaningful opportunity for any party but PG&E to be heard on the amortization issue—was not consistent with due process, and violated the procedure established by § 1701.1(b)(1) as well as by Rules 1.3(h), 7.2, and 7.3.[122] CLECA and AECA have opposed PG&E's support for a 12-month amortization period but, unlike PG&E, were prejudiced by the lack of a meaningful opportunity to be heard. The Commission's failure to allow other parties to develop even a rudimentary evidentiary record on an issue outside the Scoping Memo was contrary to due process,[123] a failure to proceed in the manner required by law, and an abuse of discretion.[124]

E. The Commission Cannot Award PG&E Relief When It Has Failed to Carry Its Evidentiary Burden

The granting of PG&E's requested 12-month amortization period, despite PG&E's failure to carry its burden, indicates that the burden of proof was effectively shifted from PG&E to intervenors. As the utility applicant, PG&E had "the burden of affirmatively establishing the reasonableness of all aspects of its application . . . Other parties [did] not have the burden of

[122] § 1701.1(b)(1) provides: "The commission, upon initiating an adjudication proceeding or ratesetting proceeding . . . shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing."
[123] *See, e.g.*, *So. Cal. Edison Co. v. Pub. Utils. Comm'n*, 140 Cal. App. 4th 1085 (2006); *cf. City of Los Angeles v. Pub. Utils. Comm'n*, 15 Cal.3d 680 (1975).
[124] § 1757(a)(2), (5).

proving the unreasonableness of [PG&E's] showing."[125] The amortization issue, however, was an eleventh-hour addition to the proceeding after PG&E testimony's materially altered the facts of the case. PG&E then submitted an additional round of testimony solely on the issue of amortization, which was entered into the record. Consequently, the only facts in the record regarding the amortization issue were the facts introduced by PG&E.

These procedural irregularities constituted an abuse of discretion and a failure to proceed in the manner required by law.[126] As a threshold matter, the Commission was obligated to afford other parties a meaningful opportunity to respond.[127] While it is true that the parties filed meet-and-confer statements regarding amortization, the California Supreme Court has made it clear that these brief filings do not constitute a meaningful opportunity to be heard. The Court has held that "an opportunity to be heard" embraces more than written comments on a proposal.[128] Rather, where a party is protesting a rate change based on late-filed hearsay evidence not subject to cross-examination, statutory and due process

[125] D.12-11-051 at 8 (Nov. 29, 2012). In general, if the weight of evidence is equally balanced, then there is no preponderance in favor of the applicant. *See Cal. Shoppers, Inc. v. Royal Globe Ins. Co.*, 175 Cal. App. 3d 1 (1985).
[126] § 1757(a)(2), (5).
[127] *See, e.g.*, *TURN*, 223 Cal. App. 4th at 759 (reversing Commission decision that relied on hearsay materials "not tested by cross-examination"); *City of Huntington Beach v. Pub. Utils. Comm'n*, 214 Cal. App. 4th 566, 592-93 (2013) (noting "no authority in the commission's rules or elsewhere for the notion that the scope of the underlying proceeding can be expanded . . . to the detriment of a party"); *see also* § 1701.1(b)(1) ("The assigned commissioner shall schedule a prehearing conference and shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, *consistent with due process*, public policy, and statutory requirements, determines whether the proceeding requires a hearing.") (emphasis added).
[128] *Cal. Trucking Ass'n v. Pub. Utils. Comm'n*., 19 Cal. 3d 240, 244 (1977) ("The phrase 'opportunity to be heard' implies at the very least that a party must be permitted to prove the substance of its protest *rather than merely being allowed to submit written objections to a proposal*.") (emphasis added).

considerations establish that such "parties are entitled to be heard and to *introduce evidence*."[129]

Moreover, if only the utility has the opportunity to enter facts into the record, those facts are likely to become a baseline against which other parties must argue.[130] This procedural posture makes it particularly unfair to award a utility its requested relief after it has failed to show by a preponderance that the relief would be just and reasonable. Instead, the utility must not receive the requested relief. Under California law, "it is presumed that the *existing rates are reasonable*."[131] Thus, "to raise rates, it is incumbent on the utility to justify the increase."[132] If the utility does not meet its burden, its relief will be denied.[133] An alternative outcome would permit a utility to prevail by default and thus shift the burden of proof to ratepayers.[134]

V. CONCLUSION

For the foregoing reasons, CLECA and AECA respectfully request that this application for rehearing be granted, and the Decision's rejection of the longer amortization period reversed. This application for rehearing should be expeditiously granted and PG&E ratepayers afforded the rate relief they so desperately need via the longer 24-month amortization period. This Commission's failure to resolve impactful, costly issues in favor of the ratepayers includes multiple departures from existing Commission precedent, and should be reversed.

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[129] *See id*. at 245 (emphasis added).
[130] *See*, *e.g.*, *TURN supra* note 79.
[131] D.83-12-025, 13 CPUC 2d 412 (Dec. 7, 1983) (emphasis added).
[132] *Id*.
[133] *Id*.
[134] Specifically, ratepayers would need to affirmatively show the utility's request was unjust and unreasonable.

Respectfully submitted,

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CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

March 14, 2022